

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11 Cases
)	
FOAMEX INTERNATIONAL INC., <i>et al.</i> ,)	Case No. 05-12685 (KG)
)	
Debtors.)	(Jointly Administered)

AGREED ORDER

This Settlement Agreement ("Agreement") is made between the United States of America, on behalf of the United States Environmental Protection Agency (collectively, the "United States") and Foamex L.P. ("Foamex," and together with the United States, the "Parties") this ___ day of January, 2007.

I. BACKGROUND

A. Procedural Background

1. Headquartered in Linwood, Pennsylvania, Foamex International, Inc., Foamex's parent company, is a public holding company that, along with its subsidiaries and affiliates, as of the Petition Date (as defined below), employed approximately 5,450 people worldwide and maintained 42 domestic and 9 international manufacturing facilities located throughout the United States, Canada and Mexico. Foamex believes that it is one of the largest manufacturers of flexible polyurethane and advanced polymer foam products in North America, with annual net sales exceeding \$1 billion.

2. On September 19, 2005 (the "Petition Date") Foamex and certain of its affiliated entities (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (as amended, the

"Bankruptcy Code") with this court ("Bankruptcy Court"). Their cases are being jointly administered for procedural purposes only.

3. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On November 27, 2006, the Debtors filed their *Disclosure Statement for Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code* (the "Disclosure Statement") [Docket No. 1993] and *Second Amended Joint Plan of Reorganization, Under Chapter 11 of the Bankruptcy Code* (the "Plan") [Docket No. 1994]. On November 27, 2006, this Court entered an Order approving the Disclosure Statement. The Debtors are currently soliciting votes on the Plan and a hearing to consider confirmation of the Plan is scheduled for February 1, 2007.

B. The Penalty Claims Related to Foamex's Corry, Pennsylvania Facility

5. As a result of an inspection at the Foamex facility located in Corry, Pennsylvania, conducted between November 3, 2003 and November 6, 2006, the United States has asserted a claim for civil penalties (the "Corry Claim") pursuant to the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401 *et seq.*, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 *et seq.*, the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq.*, and the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11001 *et seq.* The United States seeks civil penalties pursuant to (1) Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g); (2) Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for alleged violations of the regulations

found at 40 C.F.R. Part 63, subpart III, the National Emission Standards for Maximum Achievable Control Technology for Flexible Polyurethane Foam Production ("Foam MACT"); (3) Section 309 of the CWA, 33 U.S.C. § 1319, for alleged violations of the stormwater regulations found at 40 C.F.R. § 122.26; (4) Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), for alleged violations of the Spill Prevention, Control, and Countermeasure Plan ("SPCC") regulations found at 40 C.F.R. Part 112; and (5) Section 325 of EPCRA, 42 U.S.C. § 11045, with respect to alleged violations observed by EPA at the Foamex facility located in Corry, Pennsylvania. Foamex disputes these alleged violations.

C. The CERCLA Claim for the Omega Chemical Corporation Superfund Site (or the "Omega Site")

6. The United States has asserted that Foamex is jointly and severally liable with other alleged potentially responsible parties under Section 107(a)(3) of CERCLA (as defined below) for all costs of removal or remedial action incurred by the United States not inconsistent with the national contingency plan with respect to the Omega Chemical Corporation Superfund Site located in Whittier, California (the "Omega Claim"). EPA has unpaid past response costs in the amount of approximately \$7.5 million dollars and anticipates total future response costs as much as \$89 million dollars at the Omega Site. The United States has asserted that Foamex is liable under Section 107(a)(3) of CERCLA, because it allegedly arranged for the treatment or disposal of hazardous substances that it owned or possessed at the Omega Site. Foamex disputes these allegations and the related alleged liabilities.

D. The United States' Claim in Foamex's Bankruptcy Case

7. On March 17, 2006, the United States filed a claim in the Debtors' bankruptcy cases, which claim was designated as Claim No. 1236 (the "Claim") by the court-appointed claims agent in these bankruptcy cases, in an unliquidated amount. The Claim, a copy of which is annexed hereto as Exhibit ___, asserts certain penalty claims and liabilities against the Debtors related to the Corry Facility and claims for past and future response costs at the Omega Chemical Corporation Superfund Site (each as defined below), including the Corry Claim and Omega Claim.

E. Negotiations and Settlement

8. Shortly after the filing of the Claim, the Parties commenced negotiations with respect thereto. The Parties have been engaged in negotiations to resolve the issues, claims and alleged liabilities raised in the Claim for several months and have concluded negotiations as memorialized herein. The United States reserves its right to object to confirmation of the Debtors' proposed Plan of reorganization.

9. The United States and Foamex agree, and this Court by entering this Agreed Order finds, that this Agreed Order has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties and that this Agreed Order is fair, reasonable, in the public interest and in the best interests of the Debtors, their estates and creditors.

THEREFORE, with the consent of the Parties to this Agreed Order, it is hereby ORDERED, that

II. JURISDICTION AND VENUE

10. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157, 1331, 1334, 1345, and 1355. This is a core proceeding under 28 U.S.C. § 157(b)(2). Foamex consents to and shall not challenge entry of this Agreed Order or this Court's jurisdiction to enter and enforce this Agreed Order. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

III. BINDING EFFECT

11. This Agreed Order is binding upon the United States and upon Foamex and its successors and assigns. Any change in ownership or corporate or other legal status of Foamex, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Foamex under this Agreed Order.

IV. DEFINITIONS

12. Unless otherwise expressly provided herein, terms used in this Agreed Order which are defined in CERCLA, RCRA, EPCRA, CWA, and the CAA or in regulations promulgated under CERCLA, RCRA, EPCRA, CWA, or the CAA shall have the meaning assigned to them in these statutes and the regulations promulgated thereunder. Whenever terms listed below are used in this Agreed Order or in any appendix attached hereto, the following definitions shall apply:

“Agreed Order” shall mean this agreed order;

“Clean Air Act” shall mean the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq.;

"Clean Water Act" ("CWA") shall mean the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq.;

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.;

"Class 5 General Unsecured Claim" shall have the meaning set forth in the Plan;

"Class 6 Unliquidated Claim" shall have the meaning set forth in the Plan;

"Corry Facility" shall mean the Foamex L.P. owned facility located in Corry, Erie County, Pennsylvania;

"Day" shall mean a calendar day (in computing any period of time under this Agreed Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day);

"DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States;

"EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States;

"EPCRA" shall mean the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11001 et seq.;

"Omega Chemical Corporation Superfund Site" or the "Omega Site" shall mean the Omega Chemical Corporation Superfund Site located in Whittier, California;

"Paragraph" shall mean a portion of this Agreed Order identified by an Arabic numeral or an upper or lower case letter;

"RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; and

"Section" shall mean a portion of this Agreed Order identified by a Roman numeral.

V. TREATMENT OF THE CLAIM

13. The Parties agree that the Claim shall be bifurcated into two separate claims: (i) Claim No. 1236-A (the "Omega Claim"), and (ii) Claim No. 1236-B (the "Corry Claim"). The Omega Claim shall address all portions of the Claim for past and future response costs related to the Omega Chemical Corporation Superfund Site. The Corry Claim shall incorporate all portions of the Claim for penalties asserted in the Proof of Claim related to the Corry Facility.

14. With respect to the Omega Claim, the Parties agree that the Omega Claim shall be treated as a Class 6 Unliquidated Claim under the Plan.

15. With respect to the Corry Claim, the Parties agree that the United States shall have an Allowed Class 5 General Unsecured Claim under the Plan in the amount of One Hundred Twenty Eight Thousand, Five Hundred and Sixty dollars (\$128,560.00) (the "United States Allowed Claim") as full settlement of the Corry Claim for civil penalties under the CAA, CWA, EPCRA, and RCRA which have been asserted or have arisen prior to the effective date of the Plan (as defined in the Plan, the "Effective Date") with respect to the Corry Facility. The Corry Claim shall receive the same treatment under the Plan, without discrimination, as other Allowed Class 5 General Unsecured Claims, provided, however, that the United States waives any right to receive Post-Petition Interest (as defined in the Plan) with respect to the Corry Claim. In no

event, shall the Corry Claim be subordinated pursuant to a provision of the Plan or Bankruptcy Code to any other Allowed Class 5 General Unsecured Claim. Payment of the Corry Claim shall be made pursuant to the Plan and transmitted by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing U.S.A.O. file no. _____, in accordance with instructions provided by the United States to the Debtor after execution of this Settlement Agreement. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

16. As further consideration for this settlement, Foamex has agreed to increase the capacity of the secondary containment for the tank truck unloading area at the Corry Facility within 120 days from the date the Court signs this Agreed Order. The enhanced secondary containment shall be sufficient to contain 2,000 gallons.

VIII. MISCELLANEOUS

17. This Agreed Order constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreed Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreed Order.

18. The Parties enter into this Agreed Order for the sole purpose of settling all of the alleged violations described above. The Debtors deny the alleged violations, contest the civil penalty calculation, and do not admit any liability, fact, or legal conclusion by entering into or complying with this Agreed Order. The United

States agrees that nothing set forth in this Agreed Order shall be used as or construed to be an admission of any fact, allegation or liability alleged by the United States.

19. Foamex's entry into this Agreed Order is subject to the approval of the Bankruptcy Court. Foamex agrees to exercise all reasonable efforts to obtain the prompt approval of the Bankruptcy Court. This Agreed Order is also subject to public comment following publication of notice of the Agreed Order in the Federal Register. The United States requests, and the Debtors agree, that the Court's approval of the Agreed Order be subject to the public comment period. In the event the United States receives comments after the date of this Order, the United States will immediately present such comments to the Court along with the United States recommendation with respect to such comments. In the event that no comments are received after the date of this Order, no further action will be undertaken. If the United States withdraws from this Agreement following the public comment process referred to above or for any reason this Court should decline to approve this Agreed Order in the form presented or as subsequently modified by agreement of the Parties, this Agreed Order shall be null and void and the terms of the agreement may not be used as evidence in any litigation between the Parties.

20. The Parties may execute this agreement in counterparts.

IX. EFFECTIVE DATE

21. The effective date of this Agreed Order shall be the date upon which it is entered by the Court.

SO ORDERED THIS _____ DAY OF _____ 2007.

Kevin Gross
United States Bankruptcy Judge

FOR THE UNITED STATES OF AMERICA.

By:
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: Donald S. Welsh
Regional Administrator
U.S. Environmental Protection Agency
Region 3

Date: _____

FOAMEX INTERNATIONAL INC., FOAMEX
L.P., FOAMEX LATIN AMERICA, INC.,
FOAMEX ASIA, INC., FMXI, INC., FOAMEX
CARPET CUSHION LLC, FOAMEX CAPITAL
CORPORATION, FOAMEX MEXICO, INC. AND
FOAMEX MEXICO II, INC.

By:

Its:

1000 Columbia Avenue
Linwood, PA 19061